

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA

CLERK OF COURT
WESTERN DISTRICT OF NORTH CAROLINA

SEP - 3, 1992

J. E. HON. CROGHON
Clerk

In Re:

MARY ANN MARTIN,

Debtor.

Case No. 92-31184
Chapter 13

MARY ANN MARTIN,

Plaintiff,

Adversary Proceeding
No. 92-3166

v.

DRUG EMPORIUM, FOOD SHELF, and
SHOE SHOW,

Defendants.

JUDGMENT ENTERED ON 9-3-92

ORDER GRANTING PERMANENT INJUNCTION

This matter is before the court on the debtor's Motion for Permanent Injunction to enjoin creditors Drug Emporium, Food Shelf and Shoe Show from prosecution of worthless check charges in Cabarrus County District Court. After a review of the record the court concludes that the debtor's Motion should be granted.

Section 362(b)(1) of the Bankruptcy Code specifically excludes the "commencement or continuation of a criminal action or proceeding against the debtor" from the restrictions of the automatic stay. 11 U.S.C. § 362(b)(1). However, the pursuit of a criminal action for the purpose of collecting a pre-petition debt is stayed under § 362(a). Criminal prosecution of worthless checks for the purpose of collecting a pre-petition debt has long been considered in this jurisdiction an action that is stayed

under § 362(a) of the Code. See, e.g., In re Penny, 414 F. Supp. 1113 (W.D.N.C. 1976).

A recent unpublished opinion in the Fourth Circuit has clarified the prior practice of this jurisdiction concerning the issuance of an injunction to enjoin bad check prosecutions. In In re Sylvestre, No. 91-2689 (4th Cir. May 27, 1992), the Fourth Circuit noted that § 362(b) specifically provides that all criminal actions, including those brought for the purpose of collecting a debt, were excluded from the automatic stay. Nevertheless, because the use of the criminal process to collect a debt may frustrate the purpose of the automatic stay, the court suggested that the proper remedy for the debtor would be to seek a separate injunction to enjoin the criminal prosecution. The effect of the Fourth Circuit's ruling was to clarify that the collection nature of the criminal prosecution does not by itself operate as an injunction to enjoin the prosecution.

Complying with the Fourth Circuit's requirement, the debtor in this case seeks a permanent injunction against any further criminal process on several worthless checks that the debtor issued pre-petition. At an earlier hearing on the debtor's Motion for Preliminary Injunction, the debtor satisfied the court that the primary purpose of the prosecution was for the collection of a debt. The facts of the case have not changed and the debtor is entitled to a permanent injunction enjoining Drug Emporium, Food Shelf and Shoe Show from further prosecution of the worthless checks.

The court takes this opportunity to note that only the debt collection element of the prosecution is enjoined by this Order. Purely criminal actions are not enjoined. Further, the court notes that an injunction pursuant to § 362(a) should apply only so long as § 362 is applicable -- this is, only so long as the debtor remains in the Chapter 13 proceeding. If the Chapter 13 case is dismissed, the injunction becomes ineffective automatically; and upon completion of the Plan, the injunction is superseded by the discharge injunction of § 1328.

It is therefore ORDERED that:

1. Drug Emporium, Foods Shelf and Shoe Show are permanently enjoined from pursuing any further criminal action on the worthless checks for the purpose of collecting a debt; and
2. This injunction shall be in effect as long as the debtor remains in Chapter 13, and thereafter to the extent provided in § 1328 of the Code.

This the 22 day of September, 1992.



George R. Hodges
United States Bankruptcy Judge